IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CRIMINAL REVISION PETITION NO.994/2006
(Prabhu Singh & Ors. Vs. State & Ors.)

Date of order : October 4th, 2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. B.S. Rathore, for the petitioners.
Mr. Vishnu Kachchwaha, Public Prosecutor.
Mr. A.R. Nikub with
Mr. O.P. Mishra, for non-petitioner No.2.

By way of filing the present revision petition, the petitioners have challenged the order impugned dated 5.10.2006 passed by Civil Judge (JD) & Judicial Magistrate, First Class, Didwana in criminal Case No.213/2005 whereby the learned Magistrate allowed the application filed by complainant under Section 319 Cr.P.C. and took cognizance against the petitioners for offences under Sections 323 and 325 I.P.C. and summoned them by way of issuing bailable warrant against them.

According to the facts of the case, complainant-non-petitioner No.2 – Sumer Singh filed a

compliant before Police Station Khunkhuna against the present petitioners as well as against Sajjan Singh in which it was alleged that on 12.12.2005 at about 8 p.m. accused persons entered in his house and assaulted him and his mother. It was specifically alleged that Surendra Singh caused lathi blow on his head and thereafter, all the accused gave beating.

After registering the case, regular investigation commenced and challan was filed against Sajjan Singh alone. Thereafter charges were framed against Sajjan Singh and prosecution witnesses PW-1 Sumer Singh, PW-2 Sohan Singh and PW-3 Smt. Kamal Kanwar were examined. Thereafter, an application under Section 319 Cr.P.C. was filed by complainant stating therein that as per the evidence recorded in the Court, the cognizance is required to be taken against the petitioners and prayed that petitioners' names may be added along with main accused and process may be issued against them.

Learned trial Court allowed the said application after considering the statement recorded by Court and took cognizance against the petitioners for offence under Sections 323 and 325 I.P.C.

It is contended by the learned counsel for the petitioners that impugned order passed by learned trial Court, taking cognizance against the petitioners

is illegal and improper and there is no evidence on record for taking cognizance against them. Therefore, in the interest of justice, the impugned order deserves to be quashed and set aside. It is further argued that after thorough investigation, police found that only Sajjan Singh is involved in the above case and petitioners were not involved in the case, therefore, no charge-sheet was filed against them. According to learned counsel for the petitioners, as per the statement of PW-1, PW-2 and PW-3, though they named the petitioners but in the statement recorded under Section 161 Cr.P.C. the petitioners were not named. Therefore, in the above circumstances, it is clear that in the Court the above witnesses have improved their previous version given before Police and gave out a new story. Thus, in these circumstances, the trial Court cannot take cognizance against the petitioners.

It is contended by the learned counsel for the petitioners that as per the statement recorded by trial Court, there is no material for taking cognizance against the petitioners. Moreover as per the counsel for the petitioners, upon perusal of injury report of injured Surneder Singh, there were three injuries and only one injury was found upon the body of Smt. Kamal Kanwar. Therefore, in fact, there were only four injuries upon the body of two persons and those injuries were assigned to Sajjan Singh in

the investigation, therefore, the learned Magistrate has committed error while not considering this aspect of the matter with regard to non-corroboration by medical evidence. Therefore, it is prayed that the impugned order of taking cognizance against the petitioners is required to be quashed and set aside.

Learned counsel for the petitioners has invited the attention of this Court towards the judgment rendered by Hon'ble Supreme Court in case of Michael Machando & Anr. Vs. Central Bureau of Investigation & Anr., reported in (2000) (3) SCC 262 and as per the said judgment, if upon appreciation of evidence it is found that ultimate conviction is not possible upon the evidence so recorded, then discretion is left with the Court and power under Section 319 Cr.P.C. should not be exercised, therefore, the order impugned is illegal and deserves to be quashed.

On the other hand, learned counsel for non-petitioner vehemently contended that there is sufficient evidence against the petitioners, therefore, the learned trial Court has rightly allowed the application filed under Section 319 Cr.P.C. because as per the statement of PW-1, PW-2 and PW-3, there is sufficient evidence for taking cognizance against the petitioners for offence under Section 323 and 325 Cr.P.C. Hence, the impugned order does not

require any interference by this Court.

Learned counsel for the non-petitioner has invited the attention of this Court towards the judgment of Hon'ble Supreme Court in case of M/s. SWIL Ltd. Vs. State of Delhi, reported in 2001 Cri.L.J. 4173, in case of Girish Yadav & Ors. Vs. State of Madhya Pradesh, reported in AIR 1996 SC 3098 and another judgment in case of Smt. Rukhsana Khatoon Vs. Sakhawat Hussain & Ors., reported in AIR 2002 SC 2342 and submitted that in these cases, the Hon'ble Supreme Court has held that if police has not submitted charge-sheet against certain persons and subsequently on recording evidence of witnesses, it is found that there is evidence with regard to involvement of said persons in commission of offence, then Court can exercise its power under Section 319 Cr.P.C. and can proceed against those persons.

I have heard learned counsel for the parties and perused the entire record of the case as well as the judgments cited by learned counsel for the parties.

First of all for arriving at with the conclusion, it is necessary to peruse the statement of prosecution witnesses namely PW-1, PW-2 and PW-3. Admittedly PW-1 and PW-3 are injured persons. It is also obvious from their injury report that in all there are four injuries inflicted to both the persons.

As per the injury report three injuries were found upon the body of Sumer Singh and one injury upon the body of Smt. Kamal Kanwar. Now upon perusal of statement of PW-1 Sumer Singh, it is specifically alleged by him that Surendra Singh has inflicted injury by lathi upon his head so also upon his finger. Likewise, he has stated before the Court in his statement that Sajjan Singh has inflicted injury upon the body of his mother and due to which injury, his mother received fracture upon her hand. Meaning thereby all the injuries were specifically assigned by injured Sumer Singh and for other persons, there is omnibus statement that all the persons inflicted injuries. Likewise as per the statement of PW-3 Smt. Kamal Kanwar, it is specifically stated by her that Surender Singh has inflicted injury upon the head of Sumer Singh and for other persons omnibus statement is made by her before the Court. Similarly, PW-2 Sohan Singh has specifically stated in his statement that Surendra Singh has inflicted injury upon the head of Sumer Singh. He has specifically named Surendra Singh for inflicting injury and for other persons, only omnibus statement is made that they participated in quarrel. Upon appreciation of evidence, it is clear that there is specific allegation against Surendra Singh. Likewise according to the injury report of Sumer Singh and Smt. Kamal Kanwar, there are four injuries upon the body of these two injured persons and those injuries were specifically assigned to

Sajjan Singh and Surendra Singh. Therefore, obviously, the allegations with regard to causing injuries by other persons is not corroborated by medical evidence. Therefore, in my opinion, the cognizance taken by trial Court against Prabhu Singh, Sada Kanwar and Saroj Kanwar is not sustainable whereas there is sufficient evidence against petitioner No.2 – Surender Singh because there is specific allegations in the statement recorded by the trial Court.

In these circumstances, as per the judgment of Hon'ble Supreme Court cited by learned counsel for non-petitioner in case of Girish Yadav & Ors. Vs. State of Madhya Pradesh,reported in AIR 1996 SC 3098, Court can proceed to take cognizance under Section 319 Cr.P.C. against those persons against whom evidence of involvement in commission of offence is found. Obviously, according to the evidence recorded by trial Court, there is material on record to proceed against Surender Singh but there is not sufficient evidence for taking cognizance against petitioner No.1, 3 and 4.

Hence, this petition is partly allowed. The cognizance taken by trial Court against Surender Singh does not require any interference by this Court whereas the cognizance taken against Prabhu Singh, Sada Kanwar and Saroj Kanwar is set aside. The order

impugned dated 5.10.2006 passed by Civil Judge (JD) & Judicial Magistrate, First Class, Didwana is modified accordingly.

(GOPAL KRISHAN VYAS), J.

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